



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

September 2010

Volume 133

Federal Court Finds DOMA Unconstitutional

In 1996, Congress passed the Defense of Marriage Act (DOMA). This federal law defines the terms "marriage" and "spouse," for purposes of federal law, to include only the union of one woman and one man. In July, 2010, a federal district judge who was appointed by President Nixon found DOMA to be unconstitutional in two related cases.

In the first case, Gill v. Office of Personnel Management, 2010 WL 2695652 (D. Mass), several gay and lesbians who were married in Massachusetts challenged their denial of spousal benefits under federal law. For instance, those who were federal employees were not able to obtain health insurance from their employer for their spouses; they were not entitled to spousal retirement benefits under social security and they could not file as married couples when filing their federal tax returns.

The Court applied the easiest burden for the government, in its support of DOMA, to meet: the rational basis inquiry. Under this legal standard, the government had to show only that there is some rational basis, some "footing in reality," for the classification prohibiting federal recognition of same-sex marriages. The government was unable to do so. The arguments that Congress made when it passed DOMA – that it

would encourage responsible procreation and child-bearing, that it would defend and nurture the institution of traditional heterosexual marriage, that it would defend traditional sources of morality and that it would preserve scarce resources – were not argued in this case. Instead, the government argued that DOMA would preserve the status quo.

The Court did not find the status quo argument persuasive. It noted that the status quo at the time that DOMA was passed was that states each individually defined marriage and that the federal government accepted those individual definitions. The Court said that Congress does not have an interest in creating a uniform definition of marriage. The Court said that "[i]n the wake of DOMA, it is only sexual orientation that differentiates a married couple entitled to federal marriage-based benefits from one not so entitled. And this Court can conceive of no way in which such a difference might be relevant to the provision of the benefits at issue."

The second ruling, Massachusetts v. United States Department of Health and Human Services, 2010 WL 2695668 (D. Mass), was issued the same day as Gill. Massachusetts receives federal money to maintain veterans' cemeteries within its borders.

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Driving And The ADA: Two Recent Developments

So far, six Courts of Appeals have decided that driving is not a major life activity as defined by the Americans with Disabilities Act. One of these cases was recently rejected by the Supreme Court, so for now, driving will not be considered a major life activity.

In the most recent case, Ireane Kellogg worked as a safety technician. Part of her job involved driving company vehicles to worksites. She was diagnosed with epilepsy. Her doctor said she could continue to work, but she could no longer drive. Her employer said she was now a "liability" and could not return to her job until she had a full medical release.

She sued, and the Trial Court awarded her almost \$150,000 in compensatory damages and back pay. But the employer appealed, and the Tenth Circuit Court of Appeals noted that neither the EEOC nor other

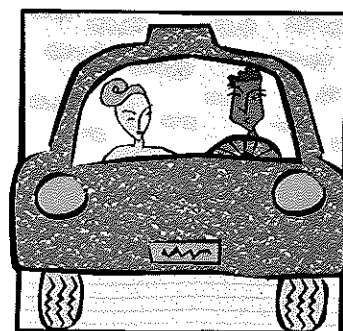
courts had found driving to be a major life activity. The Court said, "It cannot be disputed that driving is an extremely important activity to many, even most, adults. Without the ability to drive, it may be very difficult to care for oneself or to work. . . . But driving is, literally, a means to an end" and is not by itself a major life activity such as walking, talking, hearing and seeing.

The case is Kellogg v. Energy Safety Services, Inc., 544 F.3d 1121 (10th Cir. 2008). The Supreme Court denied Kellogg's appeal at 2009 WL 357536 (2009).

The recent amendments to the ADA do not list driving as a major life activity, but does somewhat expand the term, so it's possible that this issue will continue to be litigated.

In another area involving driv-

ing and the ADA, blind people are voicing concerns about hybrids and electric cars. These cars are much quieter and thus it can be much harder for blind people to know the cars are approaching. A bill pending in Congress, the Pedestrian Safety Enhancement Act of 2009, would require that every motor vehicle be equipped with methods that let blind people know a hybrid car is approaching, in a degree similar to what is garnered from standard combustion-engine-driven automobiles. How that would be accomplished is not specified. ♦



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Veterans Administration rules said that these cemeteries were to "be operated solely for veterans, their spouses, surviving spouses and [certain of their children]. "The State asked if it could bury the same-sex spouse of a veteran without losing federal money; VA said no. VA's decision was based on DOMA.

The State also receives federal money to provide Medicaid to its eligible citizens. It asked Health and Human Services if it could treat same-sex couples, legally married in the State, the same as it treated opposite-sex married couples for purposes of establishing eligibility. HHS said no, also basing its decision on DOMA.

Again, the Court found DOMA to be unconstitutional. Again, the Court noted that historically, "the federal government consistently yielded to marital status determinations established by the states," that "family law" has long been "a quintessential area of state concern." The Court said that "marital status determinations are an attribute of state sovereignty."



President Obama Announces Revised ADA Regulations

July 26, 2010, was the 20th anniversary of the Americans with Disabilities Act. On that day, President Barack Obama announced several proposed changes to ADA regulations, including the following:

--Adoption of revised design standards for recreational facilities, including swimming pools, playgrounds, golf courses, amusement rides, recreational boating facilities, exercise machines and equipment, miniature golf courses and fishing piers, and for public facilities such as courthouses, jails and prisons.

--Adoption of "safe harbor" provisions, allowing existing building elements that comply with the 1991 ADA Standards for Accessible Design to not have to be brought into compliance with the 2010 standards until the ele-

ments are subject to planned alterations.

--Adding provisions that provide guidance on the sale of tickets for accessible seating, sale of season tickets, secondary ticket markets, hold and release policy of accessible seating to people other than those who need accessible seating, ticket pricing, prevention of the fraudulent purchase of accessible seating and the ability to buy multiple tickets when buying accessible seating.

--Clarifying the definition of service animal as meaning a dog that has been individually trained to do work or perform tasks for the benefit of a person with a disability.

--Amending the rules to provide a two-tiered approach under

which wheelchairs and scooters must be permitted in all areas open to pedestrian use.

--Clarifying that timeshares and condominium properties that operate like hotels are subject to the ADA;

--Adding provisions for insuring accessibility when making reservations for places of lodging;

--Addressing accessibility of websites;

--Providing captioning and video description in movies shown in theaters;

--And addressing the ability of 9-1-1 centers to take text and video calls from people with disabilities. ♦



Members and friends of the BHRC marched in the 4th of July parade



Artists, Artisans, Writers, Performers and Others Pursuing Creative Careers

Do you have a physical or mental disability? Are you interested in increasing opportunities for artists with disabilities? ArtsWORK Indiana is forming a new regional affiliate for South Central Indiana with monthly meetings in Bloomington. If you're interested in promoting supportive networking and building arts career-related skills, attend the group's first meeting on Thursday, September 2, from 5:30 to 7 p.m. in the Hooker Conference Room of Showers City Hall, 401 Morton

Street. Showers City Hall is fully accessible and parking at this time will be free.

By attending the first meeting, you will have the opportunity to help set the direction of this new organization, make new friends and share refreshments.

The mission of ArtsWORK Indiana is to "facilitate access to careers in the arts for people with disabilities through awareness,

education and encouragement."

AWI is a informal, statewide group with a diverse membership of people with and without disabilities.

ArtsWORK Indiana's collaborating partners are Indiana Arts Commission, VSA Arts of Indiana and the Indiana Institute on Disability and Community. For more information, visit www.artsworkindiana.org and click on About ArtsWORK or e-mail Susan Showalter, South Central ArtsWORK Indiana facilitator, at HandsandSpirits@aol.com. ♦

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